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# Better Marketing



## Division of Marketing and Marketing Agreements

• AGRICULTURAL • ADJUSTMENT • ADMINISTRATION •

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### MARKETING AGREEMENT ACT IS UPHELD IN BOSTON MILK CASES; "PUBLIC NECESSITY" SAYS COURT

Temporary injunctions requiring compliance with the Federal order regulating the handling of milk in the Greater Boston, Mass., marketing area have been issued against 30 milk handlers by the Federal District Court for the district of Massachusetts.

Judge George C. Sweeney, who issued the injunctions, asserted in memoranda dated November 19 that the Agricultural Marketing Agreement Act of 1937 is a valid exercise of "the constitutional powers of Congress to regulate interstate commerce" and that it was "designed to meet a public necessity."

The court ordered that pleadings be completed within 14 days and that the trial of the cases on their merits be held "at the earliest moment consistent with the condition of the court calendar." Permanent injunctions against the handlers are sought by the Agricultural Adjustment Administration.

Previously, a 3-man tribunal of Federal judges had declined to assume jurisdiction over a cross suit brought by the Whiting Milk Co., one of the 30 handlers involved in the Boston Milk order litigation, and returned this suit to Judge Sweeney's court on November 10. This action cleared the way for his ruling on the cases.

#### Court's Ruling

Following are extracts from Judge Sweeney's memorandum in the suit against one of the 30 milk handlers:

"This case is before me on the plaintiffs' application for a preliminary injunction. It is 1 of 30 cases which were argued simultaneously. The facts differ in many of the cases and are being treated separately.

"The defendant has a principal place of business in Massachusetts, and is engaged in handling milk, either in the current of interstate commerce, or in such a manner that it directly burdens, obstructs, or affects interstate commerce in that commodity.

"A continuous flow of fresh milk into the Boston area, which includes 37 cities and towns, from rural New England is imperative. From the urban viewpoint, it is a matter of real necessity. From the producers' viewpoint, it provides a dependable market for their product, and is an important source of income to them. Less than 12 percentum of the milk brought into the Boston area originates in Massachusetts, and less than 2 percentum of it is handled exclusively in intrastate commerce.

"From 1929 to 1933, the prices paid for milk to the producers of New England declined steadily. In 1936 the price paid to producers of Vermont was 34 percentum

below the 1929 level. Conditions in other States were comparable.

#### Regulation Helped Producers

"Effective regulation has in the past proven to be a boon to milk producers. Heretofore, when Federal regulation has failed, a resumption of chaotic marketing conditions and a lowering of price levels have occurred. Experience teaches that a resumption of such conditions will occur if this defendant and others similarly situated are permitted to avoid complying with the law as it exists.

"The defendant contends that irreparable damage will be suffered by compulsory payments to the Marketing Administrator if it later develops that the Marketing Agreement Act, Order No. 4, or action taken thereunder is unconstitutional, in that there is no method provided for recovery of payments which

(Continued on p. 2)

### Connecticut Valley Shade Tobacco Groups To Discuss Market Needs

Growers, handlers, and processors of Connecticut Valley shade-grown tobacco, U. S. Type 61, will meet in Washington, D. C., December 10, to discuss production and marketing requirements for the 1938 crop year.

The conference was called by the Secretary of Agriculture in accordance with provisions of the marketing agreement for handling this type of tobacco. Recommendations will be submitted to the Secretary as a basis for his determination, under the terms of the marketing agreement, of acreage advisable to plant next year.

The marketing agreement for Connecticut Valley shade-grown tobacco has been in operation since December 1933. During this period the excess supply of Type 61 tobacco has been removed. The farm price increased from 59 cents a pound in 1932 to 90 cents a pound in 1936.

### LOWER TOBACCO STOCKS SOUGHT BY DIVERTING

#### Program Seeks To Aid Dark Air-Cured and Fire-Cured Tobacco Growers Meet Surplus Problem

A diversion program to prevent the accumulation of excess stocks of fire-cured and dark air-cured types of tobacco, and to increase the use of products manufactured from them has been announced by the Agricultural Adjustment Administration.

The program provides for diversion of dark air-cured tobacco, U. S. Type 36, and fire-cured tobacco, U. S. Types 21, 22, 23, and 24 of the 1937 crop. These types are produced primarily in central Virginia and western Kentucky and Tennessee.

Under the program, payments will be made to farmers' tobacco cooperative marketing associations and warehousemen's marketing corporations who make advances to farmers for tobacco to be diverted. The payment will represent the difference between the amount paid to the producer by the cooperative or marketing corporation for the tobacco, and the price at which the tobacco is sold for nicotine and other byproducts uses.

Applications to take part in the program and sales or contracts for sale of the tobaccos for diversion into by-product uses must be made by the seller on or before June 30, 1938. Tobacco for diversion must be shipped by the seller on or before August 31, 1938.

#### Sales Have Declined

The fire-cured tobaccos are used domestically principally in the manufacture of snuff and, to a small degree, for cheroots of the Italian type, and in smoking and chewing tobaccos. The air-cured type is used domestically in the manufacture of smoking and chewing tobaccos. Both the fire-cured and the air-cured types have been important in the export trade of the United States but, due to increase in foreign competition and trade restrictions, as well as the general world trend towards lighter tobaccos, the export trade in these American types has been declining. Until recent years, approximately three-fourths of the fire-cured and one-fourth of the dark air-cured tobaccos were exported. While domestic consumption of these types declined only from 88 million pounds in 1923 to about 70 million pounds in 1936, exports dropped from

(Continued on p. 4)





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BETTER MARKETING is issued as a means of communicating to workers and cooperators of the Division of Marketing and Marketing Agreements information relative to the Division's activities under the Agricultural Adjustment Act and related Acts

UNITED STATES  
DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION  
WASHINGTON, D. C.

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## AGREEMENT ACT UPHELD

(Continued from p. 1)

the law exacts. This argument has no appeal to this court primarily because the money that the handler is called upon to pay to the Administrator is essentially money which has accrued to the defendant as the result of the act itself.

"As a matter of fact, certain of the handlers (i. e. those who are able to dispose of the bulk of their goods at fluid, or class I prices) will acquire and enjoy a distinct advantage over their less fortunate competitors if payments to the Marketing Administrator can be avoided or delayed. The money which this defendant is called upon to pay to the Administrator must be distributed by him to other handlers in order that they may comply with the section of the act which calls for payment of a blended price to the producers. Obviously, if payments are not made to the Marketing Administrator there can be no payments made by him to the handlers who dispose of the bulk of their property at nonfluid or class II prices. It is not in the public interest to foster such a condition. \* \* \*

### "Public Necessity"

"This act was designed to meet a public necessity. The status of the public interest should be preserved until the Supreme Court has passed upon the many questions raised by these defendants. Such a preservation cannot be had by allowing those who should contribute, to retain moneys from the Administrator, which, under the act, belong to other handlers or their producers.

### Act and Order Valid

"That Congress has not provided a mode of redress in the event that the act is declared unconstitutional is not new or fatal to the act. It is not the duty of this court to pass upon the type or wisdom of legislation enacted by the Congress. There is a strong presumption that all legislative enactments are constitutional \* \* \*. There is also a well-recognized principle of law that inferior courts should hesitate to declare acts unconstitutional until it appears clearly that Congress has exceeded its authority.

"From the study that I have made of the act and to the order thereunder in connection with the 30 cases before me, I am of the opinion that stripped of its presumptions of constitutionality and unattended by limitations of propriety, the Agricultural Marketing Agreement Act of 1937 and Order No. 4 thereunder are valid exercises of the constitutional powers of Congress to regulate interstate commerce.

"The authority of a State to establish any regulation of, or create a burden upon, traffic in interstate commerce has been expressly denied in *Baldwin v. Seelig*, 294 U. S. 511, wherein Mr. Justice Cardozo stated: 'It is the established doctrine of this court that a State may not in any form or under any guise, directly burden the prosecution of interstate business.' This would likewise apply to any regulation of interstate commerce.

"If this authority is denied to the States, I think it can be fairly said that it must exist in the Congress. The Supreme Court has repeatedly stated that the power to regulate interstate commerce among the several States is supreme and plenary \* \* \*.

"This act seeks to regulate commerce among the several States, and chooses as its mode of regulation the fixing of minimum prices to be paid for the product in interstate commerce. In *Carter v. Carter Coal Company*, 298 U. S. 238, the majority of justices found it unnecessary to pass directly on the question whether Congress has the right to fix a minimum price to be paid for a commodity moving in interstate commerce, but, in the minority opinion, Mr. Justice Cardozo, with the approval of three other justices, stated, at page 326, that prices in interstate transactions 'must therefore be subject to the power of the Nation unless they are to be withdrawn altogether from governmental supervision.' No case has been called to my attention in which the Supreme Court of the United States has expressed a contrary view \* \* \*.

"If the power exists in the Congress to establish minimum prices for commodities moving in interstate commerce, I can find no exercise of that power either in the act, Order No. 4 or the actions thereunder which would result in the deprivation of property without due process of law \* \* \*.

"I am therefore of the opinion that the plaintiffs are entitled to the preliminary injunctions asked for in the first two prayers of their bill of complaint, pending a hearing on the merits."

## Hearing Called on Revised Plan For St. Louis Milk-Market Area

A proposed marketing agreement and order which would revise the order regulating the handling of milk in the St. Louis, Mo., marketing area will be considered at a public hearing to be held there December 8. The proposal is designed to keep the marketing program for the area abreast of changing conditions in the market and to clarify some provisions of the existing order.

Premiums above the prices contained in the present order have been paid re-

## Surplus Rye To Be Milled for Relief Use To Aid Producers

Surplus rye will be bought up to the end of March by the Federal Surplus Commodities Corporation under a program designed to encourage domestic consumption to prevent cash rye prices from dropping to low levels as a result of increased supplies.

The total indicated supply this year is 58 million bushels. This includes a crop of approximately 52 million bushels and a carry-over of 6 million bushels. Last year the total supply was 48 million bushels, and short supplies of other feed grains because of drought brought about a considerably greater than normal use of rye for feed. Feed grain supplies are more plentiful this year.

Most purchases will be made at the Minneapolis market, the central outlet for most of the cash rye produced in North Dakota, South Dakota, and Minnesota.

The grain bought will be diverted from normal channels of trade and commerce in order to encourage domestic consumption. It will be milled into rye flour and turned over to State relief agencies for distribution to people on relief.

A marketing agreement and an order for handlers of celery grown in Florida became effective November 13. The program under the agreement and order is designed to assist the industry in adjusting out-of-State shipments of celery more nearly in keeping with market requirements so as to improve selling conditions and returns to growers.

cently in the area. The proposed new program provides for increases in the prices to be paid producers supplying the area with milk as follows:

*Class 1 milk.*—All milk sold by handlers as milk containing not less than one-half of 1 percent butterfat, to be increased from \$2.10 per hundred pounds to \$2.45.

*Class 2 milk.*—The quantity of milk purchased, sold, or used by handlers in excess of class 1 milk, to be increased 10 cents per hundred pounds. The present price is calculated by multiplying by 3.5 the average price per pound of 92-score butter at wholesale in Chicago during the delivery period, plus 30 percent, plus 15 cents. Differentials are provided for milk delivered outside the marketing area and for evaporated milk in hermetically sealed containers.

The St. Louis milk marketing program provides for individual handler pools for the payment of uniform prices to all producers supplying the same handler. The prices received by producers are an average of the class 1 and class 2 prices, weighted according to the percentage of milk which the handler sells in each class.

The proposed agreement would also clarify the provisions regarding payment by handlers to cooperatives and other producer groups which perform certain marketing services.

A Federal milk marketing program has been in effect in St. Louis for about 4 years. The existing order went into effect on February 1, 1936.

## Southeastern Watermelons Had Odd Season

Unusual weather and growing conditions in the Southeastern States during 1937 made it necessary for a greater part of the watermelon crop to be shipped to market during fewer weeks than in any other season in the history of the industry.

The peak shipping period during 1937 was about 2 weeks shorter than usual in the Southeastern watermelon-growing States of Florida, Georgia, South Carolina, and North Carolina. This was due largely to unfavorable conditions at planting time. In Florida, the weather was cool and wet. In Georgia, where more than half of the Southeastern watermelons are grown, spring floods made heavy replantings necessary. Unfavorable conditions also prevailed in the Carolinas.

In certain areas, the abnormal conditions under which the 1937 watermelon crop had to be produced were beyond the control of growers. When harvesting got under way, the bulk of the watermelons in all four of the Southeastern States had to be picked about the same time because of the late season. This meant extremely heavy shipments from all these States during the same short period. Continued heavy shipments brought low prices.

The 1937 crop of watermelons in the Southeastern States was somewhat larger than that produced in 1936, but below the average during 1928-32. Shipments by rail in 1937 totaled around 19,800 cars, about 1,500 cars more than in 1936. For the season as a whole, shipments were not particularly heavy.

### Heavy Shipments

Under ordinary conditions, shipments of watermelons from the Southeastern States are heaviest in late June and during the month of July. In the four Southeastern States 52 percent of all rail shipments for the 1937 season were made during a period of 17 days. In the past, between 24 and 36 percent of the season's shipments left the Southeastern States during the same 17-day period from July 1 to July 17. Of the 1937 total rail shipments of southeastern watermelons, 70 percent was made during the 4 weeks ending July 24. In the past, only about 55 percent of a season's rail movement took place during the 4 weeks of heaviest shipments.

The heavy movement of watermelons to market during 1937 when all of the Southeastern watermelon States were shipping heavily at the same time caused carloads of watermelons to pile up on tracks in the terminal markets. As a result cars on track often were more than three times as great as the number of cars being unloaded.

### Low Prices

Continued heavy shipments and large track holdings on markets resulted in low prices to growers. Growers and shippers tried to meet their problem through regulations under the marketing agreement program which had the effect of preventing complete demoralization of

watermelon markets during the most critical periods of the season. These regulations could not be wholly effective because of the uncontrollable harvest and growing conditions which arose from one of the most unusual seasons in the history of the southeastern watermelon industry.

### Marketing Agreement's Role

The marketing agreement program for watermelons grown in the Southeastern States operated during 1937 for the third consecutive year. It was developed by growers and shippers in cooperation with the Agricultural Adjustment Administration for the purpose of helping the industry improve the quality of watermelons shipped and prevent glutted markets which drive down prices to growers.

During the first 2 years in which the program operated, conditions under which watermelons were grown and harvested were more nearly normal. The very unusual growing conditions which prevailed during the 1937 season resulted in marketing problems which were beyond the control of growers and ship-

## Package Bee Industry Marketing Agreement Program Hearing Set

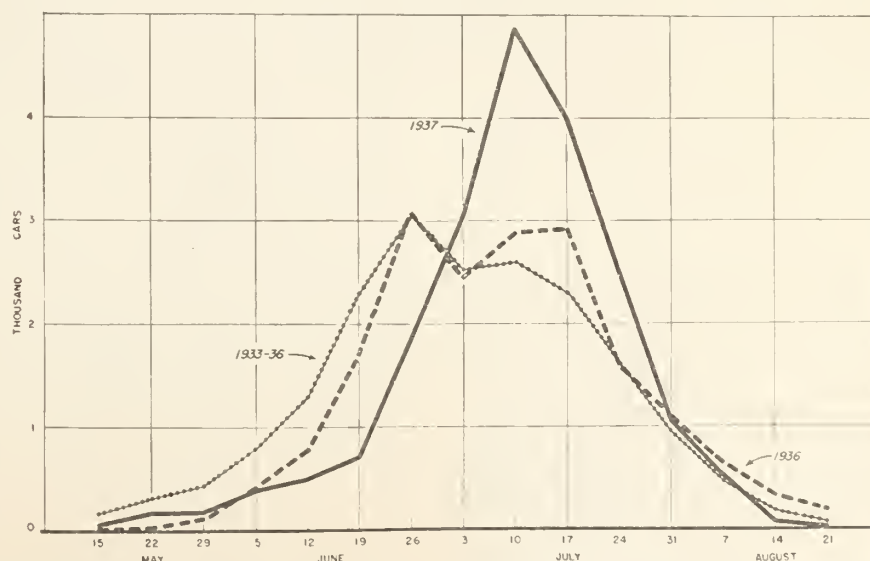
A proposed marketing agreement and order to regulate interstate and foreign commerce in package honey bees and queen bees produced in the United States will be considered at a public hearing December 6, at New Orleans, La.

Handlers of bees and queens would, under the proposal, be required to file with the control committee administering the program, the prices at which they offer bees and queens for sale and to sell at the prices which they file. Any handler could at any time revise his prices and terms of sale by filing an amended or revised schedule with the control committee. The new schedule

(Continued on p. 4)

pers, and could not be met completely by the marketing agreement program. This program was designed to improve the quality of watermelons shipped and to prevent gluts on markets during certain periods of a season in which conditions are more normal. It was not designed to cope with marketing problems such as those experienced during the abnormal 1937 season when the bulk of the watermelons was harvested at about the same time in all of the Southeastern States. As a result of their experience during the abnormal 1937 shipping season growers and shippers should be in a better position to determine the best way of meeting similar conditions should they occur in the future.

## HOW SOUTHEAST'S WATERMELONS WERE SHIPPED IN 1937



Cool and wet weather in Florida, spring floods in Georgia, and unfavorable weather conditions in parts of the Carolinas made it necessary for many growers to replant their watermelons. As a result of late planting and adverse growing conditions, the crop was late. A large part of the crop had to be shipped to market in a very short time. Under ordinary circumstances, when more normal growing conditions prevail, about 30 percent of the total watermelons shipped out of the Southeast during a season are moved between July 1 and July 17. In 1937, however, 55 percent of the watermelons were shipped during that 17-day period.



## Surplus Potatoes To Be Diverted To Starch and Flour for Relief

Details of the program to encourage diversion of surplus potatoes into starch and flour through purchases for relief use and through payments to manufacturers have been announced by the Federal Surplus Commodities Corporation.

Under the program manufacturers will be invited to submit offers to sell edible potato starch and flour to the corporation. The manufacturers must agree in their offers to purchase from growers or associations of growers 10 pounds of potatoes at least 1½ inches in diameter and grading U. S. No. 2 or better for each pound of starch and to purchase approximately 5.6 pounds of potatoes for each pound of flour sold to the corporation. The starch and flour purchased under the program will be turned over to State agencies for distribution to persons on relief.

In addition to the purchases for relief distribution, diversion of potatoes into starch and flour to be sold by manufacturers in commercial markets will be encouraged through diversion payments to the manufacturers. Under the program the manufacturers will be authorized to divert certain quantities of potatoes and will be paid 40 cents per 165-pound barrel, or 24 cents per hundred pounds, for all potatoes they use for starch and flour within the authorizations. The diversion must have been completed within 2 months after the authorization is issued.

Both programs require approved inspection of the potatoes diverted into starch and flour. Plants equipped to manufacture potatoes into these products are located in Michigan, Minnesota, Maine, and Idaho.

The production of potatoes indicated for 1937 by the November 1 crop report is approximately 392 million bushels. This is approximately 62 million bushels above the production last year and approximately 20 million bushels above the average from 1928 to 1932.

The diversion programs will be financed from the fund of 30 percent of the customs receipts made available to the Secretary of Agriculture for programs to encourage domestic consumption and outlets for agricultural commodities.

## New Markets Being Encouraged For Pacific Coast Winter Pears

The Pacific coast winter-pear industry is operating a diversion program for the second consecutive season to encourage domestic consumption and export sales of winter pears.

More than 95 percent of all domestic fall and winter pears are produced in three Pacific Coast States. For the most part this fruit has been sold in established markets such as New York and Chicago, or exported to the United Kingdom. During recent years, winter-pear production has increased rapidly, and these markets have received more pears than could be sold at remunerative prices.

Under this program a payment of 50 cents per box is made to growers or handlers who divert pears from the nor-

## LOWER TOBACCO STOCKS

(Continued from p. 1)

220 million pounds to approximately 62 million pounds.

The estimated production of these tobaccos this year is 131 million pounds. Growers have reduced their plantings of these tobaccos in recent years because of the decline in export and domestic demand. The peak level of plantings was 570,000 acres in 1915. In 1923 the acreage had declined to 394,030. The estimated acreage this year is 162,000.

### Aid to Industry

Through the diversion program, developed at the request of the growers and their organizations, the industry hopes to bring greater stability to the market for fire-cured and air-cured types of tobacco, and to prevent further accumulations of storage stocks from the 1937 crop.

The program is similar to those in effect the past 2 years with the exception that this year's program provides for diverting only loose leaf or unprized tobacco from the 1937 crop. The previous programs also included prized or hoghead tobacco produced in 1935 or earlier.

Approximately 15 million pounds were diverted under the first program. Under the second program, which will expire on December 31, 1937, more than 17 million pounds have already been diverted. Under these programs the tobacco is diverted into nicotine and other by-products. Among the uses for tobacco byproducts are fertilizers and sprays and dusts for combating plant and animal parasites.

mal channels of trade and commerce into new markets. The payment partially offsets the lower returns received from sales in new domestic and foreign markets where winter pears are little known. The program operates under an agreement between the Secretary of Agriculture and the Oregon-Washington-California Pear League, Inc., an organization formed by the members of the industry for the express purpose of administering the program.

In order to be eligible for benefits under this program, a grower or shipper must be a member of the Oregon-Washington-California Pear League, Inc. Diversion must be made by June 30, 1938. Pears diverted must be equivalent to or better than U. S. No. 1 grade with modified tolerances. The four principal varieties of winter pears included in the program are Beurre Bosc, d'Anjou, Beurre Hardy, and Winter Nelis.

An order for handlers of milk in the La Porte County, Ind., marketing area became effective November 13. It supplements regulations issued by the Indiana State Milk Control Board. The program under the order classifies milk into three classes, according to use made by handlers, and establishes minimum prices which handlers are required to pay producers for each class.

## New Export Outlets for Pecans Being Encouraged Under Program

Exports of shelled pecans are to be encouraged under a program designed to reduce the current domestic surplus of the crop and to aid the industry in establishing permanent foreign markets. This program supplements a similar program for unshelled pecans which was approved 2 months ago.

Under the program, producers and associations of producers are invited to submit offers to export shelled pecans to any countries except Mexico and Canada. Payments will be made to exporters whose offers are accepted. For shelled light pecan halves counting not more than 750 halves to the pound, the rate of payment to the exporter is 12 cents per pound. For shelled light pecan pieces the benefit payment is 10 cents per pound. In his offer the exporter must agree to export at least 2,000 pounds of shelled pecans and must specify the maximum quantity that he expects to export.

Offers must be received by December 13. Sales for export may be made between the date the offer is accepted by the Secretary of Agriculture and June 30, 1938, and the pecans must be exported before October 16, 1938.

Payments under the program are made possible under section 32 of the 1935 amendments to the Agricultural Adjustment Act. This section makes available to the Secretary of Agriculture 30 percent of annual customs receipts for uses to encourage domestic consumption or exports of agricultural commodities.

## PACKAGE BEE AGREEMENT

(Continued from p. 3)

would become effective 5 days after it was filed. Any handler could sell or offer to sell at prices filed by any other handler by giving notice to the control committee.

The proposed program contains provisions relating to unfair methods of competition, and unfair trade practices. These would prohibit selling bees and queens from an apiary infected with American foul brood. Making secret rebates, and other practices which restrain trade, would also be prohibited.

The agreement and order would replace a marketing agreement program in effect since May 1934.

More than 90 percent of the package bees and queens produced in the United States are shipped in interstate commerce from Alabama, Georgia, Mississippi, Louisiana, Texas, California, and Ohio. There are about 200 handlers of package bees and queens in the United States. Package bees shipped during the 3 years 1934-36 averaged approximately 260,000 pounds per year, and the number of queens shipped average approximately 221,000 per year.

A control committee of six would administer the agreement and order. One member would represent handlers in each of the five States of Alabama, California, Louisiana, Mississippi, and Texas, and the other member would represent handlers in other States.